

## Coast Guard, DHS

## § 137.65

(iii) Records of Federally-registered, or State-permitted or -registered, hazardous waste sites identified for investigation or remediation, such as sites enrolled in State and tribal voluntary cleanup programs and tribal- and State-listed brownfield sites (one-half mile).

(iv) Records of leaking underground storage tanks (one-half mile).

(2) Properties that previously were identified or regulated by a government entity due to environmental concerns at the facility and the real property on which the facility is located. The records or databases containing the records and the associated distances from the facility and the real property on which the facility is located for which the information should be searched include the following:

(i) Records of delisted NPL sites (one-half mile).

(ii) Registries or publicly available lists of engineering controls (one-half mile).

(iii) Records of former CERCLIS sites with no further remedial action notices (one-half mile).

(3) Properties for which there are records of Federally-permitted, State-permitted or -registered, or tribal-permitted or -registered waste management activities. The records or databases that may contain the records include the following:

(i) Records of RCRA small quantity and large quantity generators (adjoining properties).

(ii) Records of Federally-permitted, State-permitted or -registered, or tribal-permitted landfills and solid waste management facilities (one-half mile).

(iii) Records of registered storage tanks (adjoining property).

(4) A review of additional government records with regard to sites identified under paragraphs (c)(1) through (c)(3) of this section may be necessary in the judgment of the environmental professional for the purpose of achieving the objectives and performance factors of §§ 137.30(a) and (b).

(d) The search distance from the real property boundary for reviewing government records or databases of government records listed in paragraph (c) of this section may be modified based upon the professional judgment of the

environmental professional. The rationale for the modifications must be documented by the environmental professional. The environmental professional may consider one or more of the following factors in determining an alternate appropriate search distance—

(1) The nature and extent of a discharge.

(2) Geologic, hydrogeologic, or topographic conditions of the property and surrounding environment.

(3) Land use or development densities.

(4) The property type.

(5) Existing or past uses of surrounding properties.

(6) Potential migration pathways (e.g., groundwater flow direction, prevalent wind direction).

(7) Other relevant factors.

### **§ 137.65 Visual inspections of the facility, the real property on which the facility is located, and adjoining properties.**

(a) For the purpose of achieving the objectives and performance factors of § 137.30(a) and (b), the inquiry of the environmental professional must include the following:

(1) A visual on-site inspection of the facility and the real property on which the facility is located, and the improvements at the facility and real property, including a visual inspection of the areas where oil may be or may have been used, stored, treated, handled, or disposed. Physical limitations to the visual inspection must be noted.

(2) A visual inspection of adjoining properties, from the subject real property line, public rights-of-way, or other vantage point (e.g., aerial photography), including a visual inspection of areas where oil may be or may have been stored, treated, handled or disposed. A visual on-site inspection is recommended, though not required. Physical limitations to the inspection of adjacent properties must be noted.

(b) Except as in paragraph (c) of this section, a visual on-site inspection of the facility and the real property on which the facility is located must be conducted.

(c) An on-site inspection is not required if an on-site visual inspection of the facility and the real property on which the facility is located cannot be

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performed because of physical limitations, remote and inaccessible location, or other inability to obtain access to the facility and the real property on which the facility is located after good faith efforts have been taken to obtain access. The mere refusal of a voluntary seller to provide access to the facility and the real property on which the facility is located is not justification for not conducting an on-site inspection. The inquiry of the environmental professional must include—

(1) Visually inspecting the facility and the real property on which the facility is located using another method, such as aerial imagery for large properties, or visually inspecting the facility and the real property on which the facility is located from the nearest accessible vantage point, such as the property line or public road for small properties;

(2) Documenting the efforts undertaken to obtain access and an explanation of why such efforts were unsuccessful; and

(3) Documenting other sources of information regarding the presence or likely presence of oil at the facility and the real property on which the facility is located that were consulted according to §137.30(a). The documentation should include comments, if any, by the environmental professional on the significance of the failure to conduct a visual on-site inspection of the facility and the real property on which the facility is located with regard to the ability to identify conditions indicative of the presence or likely presence of oil at the facility and the real property.

## § 137.70 Specialized knowledge or experience on the part of persons specified in § 137.1(a).

(a) For the purpose of identifying conditions indicative of the presence or likely presence of oil at the facility and the real property on which the facility is located, persons specified in §137.1(a) must take into account their own specialized knowledge of the facility and the real property on which the facility is located, the area surrounding the facility and the real property on which the facility is located, and the conditions of adjoining prop-

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erties and their experience relevant to the inquiry.

(b) The results of all appropriate inquiries under §137.33 must take into account the relevant and applicable specialized knowledge and experience of the persons specified in §137.1(a) responsible for undertaking the inquiry.

## § 137.75 The relationship of the purchase price to the value of the facility and the real property on which the facility is located, if oil was not at the facility or on the real property.

(a) Persons specified in §137.1(a) must consider whether the purchase price of the facility and the real property on which the facility is located reasonably reflects the fair market value of the facility and real property if oil was not present or likely present.

(b) If the persons conclude that the purchase price does not reasonably reflect the fair market value of that facility and real property if oil was not at the facility and the real property, they must consider whether or not the differential in purchase price and fair market value is due to the presence or likely presence of oil.

## § 137.80 Commonly known or reasonably ascertainable information about the facility and the real property on which the facility is located.

(a) Throughout the inquiries, persons specified in §137.1(a) and environmental professionals conducting the inquiry must take into account commonly known or reasonably ascertainable information within the local community about the facility and the real property on which the facility is located and consider that information when seeking to identify conditions indicative of the presence or likely presence of oil at the facility and the real property.

(b) Commonly known information may include information obtained by the person specified in §137.1(a) or by the environmental professional about the presence or likely presence of oil at the facility and the real property on which the facility is located that is incidental to the information obtained during the inquiry of the environmental professional.